



Serious Incident Response Team

Investigation Summary
SIRT-NL File No. 2019-007

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Director
August 19, 2021

Introduction

On November 27, 2018 a Royal Newfoundland Constabulary (RNC) officer involved shooting occurred in the city of Corner Brook, resulting in the death of a member of the public. Due to the nature of the incident and the need for an independent investigation, on November 28, 2018 the Department of Justice and Public Safety (DJPS) contacted Ontario Provincial Police (OPP) to investigate the incident. In addition to this, DJPS engaged the Alberta Serious Incident Response Team (ASIRT) to provide an independent civilian review of the OPP's investigation.

In September 2019, the Serious Incident Response Team of Newfoundland and Labrador (SIRT-NL) was established with the appointment of its first director. SIRT-NL is a civilian led oversight agency. SIRT-NL conducts its own investigations into serious incidents. Serious incidents within this context are those involving serious injury, death, sexual offence, domestic violence or any matter of significant public interest arising from the actions of a police officer in Newfoundland and Labrador. It should be noted that, at all material times hereto, SIRT-NL was not yet operational.

Because the OPP investigation remained ongoing at the time of SIRT-NL's establishment, together with the fact that ASIRT had not commenced its review of the investigation, DJPS, ASIRT, the OPP and SIRT-NL agreed, in December 2019, that SIRT-NL would take over ASIRT's role of reviewing the OPP's investigation.

It is important to outline the nature and scope of a review. The purpose of a review is to provide an independent and objective examination of an investigation to ensure the investigators conducted the investigation properly, used best practices and took all investigative steps appropriate in the circumstances. In its review, SIRT-NL also assesses whether there is any evidence of bias, tunnel vision or lack of objectivity on the part of the investigating agency. This is to ensure the public has trust in the investigation and its consequences.

A review is not a second investigation. On a review, the focus is on the quality of the investigation into an incident, not the incident itself. It is not within the scope of our review to determine whether the subject officer(s) acted lawfully during the alleged incident or whether grounds exist to lay charges. The investigative agency, not SIRT-NL, makes that final determination. In overseeing and reviewing the investigation, SIRT-NL can make recommendations and provide input but does not have jurisdiction to order the OPP or RNC to take certain steps.

Overview

The following comes from the OPP Final Report. I have substituted "SO#" ("subject officer#") for the names of the RNC officers involved and "AP" ("affected person") for the name of the individual involved in the incident. In addition, I have substituted "WO#" ("witness officer #") and "W#" ("witness #") for any other officers and individuals, respectively, who provided relevant information.

On November 25, 2018 AP was arrested and charged for assaulting his former girlfriend, W1, at his mother's residence. AP and W1 have two young children in

common. They have been involved in several domestic violence occurrences in the past. As a result of the assault, AP was arrested and released on November 26, 2018, under conditions to refrain from contacting W1.

On November 27, 2018, W1 provided information to the police that AP had contacted her and therefore had breached the conditions of his recognizance of bail.

SO1 and SO2 of the Royal Newfoundland Constabulary were dispatched to the call for service. The two officers checked AP's residence, situated at [address removed], where they observed that he was not home. The officers also contacted AP's mother to see if she knew of his whereabouts.

AP had been socializing with friends through the afternoon and into the evening when he became aware the police were looking for him. The RNC dispatch received a phone call from AP, where he advised the dispatcher that he had returned home. SO1 and SO2 returned to AP's residence for the purpose of arresting him.

AP met SO1 and SO2 at the entrance of his residence. He was allowed to return inside the residence in order to turn off the oven.

According to SO1 and SO2, AP approached the officers with a knife in a threatening/aggressive manner.

SO1 drew his issued firearm and, after issuing a command to drop the knife, fired one shot at AP. The bullet struck AP in the forearm, before it travelled through his shoulder and entered his rib cage. AP was killed as a result of the shot and was pronounced dead later at the hospital.

The Investigation

Before the OPP were engaged, initial scene securement and exhibit preservation and collection were carried out by the RNC. The following was done:

- The scene was secured so nobody other than forensic officers could enter.
- Overall photos and videos were taken of the scene.
- Exhibits were collected.
- The subject officers' firearms were seized.
- SO1 and SO2 were directed to return to RNC headquarters and were then separated. They were instructed not to discuss the matter.

The OPP investigation, which is the subject of this report, commenced the next day. The following steps were taken:

- A Major Case Management Triangle was established (Major Case Manager, Primary Investigator/Victim Liaison and File Coordinator). In addition to the Triangle, the

investigative team consisted of a Search Warrant Co-ordinator/Field Investigator, a Criminal Analyst, a second Field Investigator and two Forensic Identification Officers from the RNC.

- DNA analysis was conducted on several exhibits.
- An analysis was done of SO1's firearm.
- A bloodstain pattern analysis was conducted and a report was prepared.
- Statements were taken from several RNC officers, including the two officers who were involved in the incident.
- Police notes/reports were obtained from the RNC officers involved.
- The training records of SO1 and SO2 were obtained.
- A neighbourhood canvass was conducted.
- Numerous individuals were interviewed, including paramedics, civilians, friends and family of AP.
- 16 warrants/production orders were obtained and executed.
- RNC dispatch recordings were obtained.
- The results of the autopsy performed on AP, including a toxicology report, were obtained.
- The Criminal Analyst prepared a timeline of the events leading up to the incident.
- The Family Liaison Officer maintained regular contact with a member of AP's family and ensured that Victim Assistance was available to all family members.

I. RNC Officer Statements

OPP investigators obtained statements from several RNC officers. The most relevant are the statements of the two officers involved in the incident, SO1 and SO2:

Subject Officer 1 (SO1)

SO1 was sworn in as a police officer on October 20, 2018. SO2 was his coach/supervisor. SO1 has no records of discipline.

On December 1, 2018, the OPP obtained a statement from SO1. He states as follows:

On the evening of November 27, 2018, SO1 and SO2 were conducting routine patrol in police uniform in Corner Brook. SO1 learned that AP had recently been charged with assaulting W1. AP had been released on a recognizance with a condition that he not contact W1. W1 contacted the RNC to report that AP had breached his recognizance.

SO1 and SO2 went to W1's residence and obtained a written statement from her. W1 told the officers that AP had kicked her in the mouth with steel toe boots, but the breach she was reporting was that he called her numerous times. The calls were from an unknown number but she recognized AP's voice because they had two children together. W1 was certain it was AP. SO1 stated he and SO2 wanted to prevent a further assault. SO1 observed a significant injury to W1's mouth and did not want to leave her in a place where she could be injured again.

At 10:30pm the officers went to AP's residence but he was not home. Because they did not have a phone number for AP, they returned to W1's residence to obtain one, but there was no answer at the door. The officers then called AP's mother, whose number they obtained from dispatch, but she was unwilling to provide AP's phone number.

The officers then learned from dispatch that AP had called the RNC Communications Centre. AP said he was home and that the police could come because he knew they were looking for him.

The two officers then travelled back to AP's residence, parked outside and knocked on the door. When AP opened the door, the officers told him they had information AP had breached his recognizance by contacting W1. At this point, the situation began to escalate. AP started to get loud and was swearing and screaming. SO1 described AP as "very aggressive" and was "all over the place". AP was pacing back and forth. At some point, AP had his phone in his hand and called somebody shortly after the police arrived. The two officers made multiple attempts to talk to AP in a calm voice and SO1 told him to show respect as the officers were showing AP respect.

AP made his way back into the main area of the apartment. SO1 followed and stood in the doorway because he had lost sight of AP. For officer safety purposes, he wanted to see what AP was doing because of the behavior AP was exhibiting. AP indicated he had food in the oven and wanted to eat it before he went with police. SO2 offered for AP to take the food and eat it if he wanted.

AP put his phone to his ear and was talking to someone. SO1 demanded that AP stop screaming. AP was loud and aggressive. He became more animated and sprinted toward the stove. He opened the stove and then reached into a butcher's block. SO1 was still standing in the doorway and SO2 was to his left. AP reached the counter and pulled out a large knife. As soon as SO1 saw the knife come up and before AP turned to face the officers, SO1 drew his firearm. As soon as AP picked up the knife, he turned towards SO1 and SO2 and raised the knife over his head in a stabbing position. AP's teeth were clenched and he was displaying a very aggressive stance. AP then started running towards SO1 and SO2, holding the knife in his right hand over his head with the tip of the knife pointed towards the officers. He did not stop and showed no signs of dropping the knife. SO1 screamed at AP to drop the knife or he would be shot. SO1 stated he was in complete fear for his life and for SO2's life. He felt that AP was able and willing to stab them. AP ignored all commands. SO1 then discharged one round into AP's right shoulder. SO1 stated he gave the command in order to give AP a chance to drop the knife, but AP kept coming. In SO1's mind, SO1 had a line drawn in the floor. If AP crossed that line, SO1 would have no other choice but to shoot to protect his life and his partner's life.

When SO1 shot, the round knocked AP backwards. The shot went through AP's forearm, out his forearm and into his shoulder. AP turned and landed on his stomach but maintained control of the knife while on the ground. He started to turn towards the officers again. SO1 screamed the command to AP to let go of the knife or he would be shot. SO1 felt that even though AP was on the ground, AP could have made a quick jump and swiped police with the knife. AP was

laying on his stomach and threw the knife to his right towards the TV side of the room. At that point, SO1 felt it was safe and holstered his firearm.

SO2 had attempted to handcuff AP but AP was not able to put his right hand behind his back due to the gunshot wound. When AP was on the floor, he was co-operative but when the officers moved him to the couch, SO1 had to hold his legs down because he was kicking out so much. AP almost kicked SO1 in the head three or four times.

SO2 maintained pressure on the wound to stop the bleeding. SO1 retrieved water for AP. SO2 called for an ambulance. Two other officers arrived and relieved SO1 and SO2. SO1 and SO2 were told to return to the detachment. Once they got back to the detachment, they were separated and their firearms, duty belts, uniforms and vests were collected as evidence.

SO1 had never met AP prior to that night. SO1 had no previous dealings with AP and did not know what he looked like. There was no warning that something might occur when they responded to the call. It was just another call.

When provided with the Use of Force Model during the interview, SO1 categorized AP's actions as grievous bodily harm or death. Seeing the knife come at him made him fear for his life. SO1 stated he attempted de-escalation by telling AP to drop the knife or he would be shot. He also told AP multiple times to calm down. Upon first walking in the door, SO1 described AP as passive resistant and was upset. When the officers told AP about the breach, AP became active resistant and started pacing. He was not assaultive but was screaming with his hands up. SO1 felt the situation could turn ugly very quickly.

Regarding the knife, SO1 could not remember any detail except it was long, had a sharp point and was directly aimed at police. In a matter of seconds, it all happened and the shot was taken.

SO1 stated he does not wear a body camera nor is he issued a Taser.

Subject Officer 2 (SO2)

SO2 was in her fourteenth year as an RNC officer. She was a Coach Officer to SO1. As of November 27, 2018, she had worked with SO1 for nine shifts. There were no records of discipline on file for SO2.

On December 1, 2018, the OPP obtained a statement from SO2. She states as follows:

On November 27, 2018, she commenced her night shift with SO1 and the two officers were conducting routine patrol in Corner Brook. They stopped into headquarters and were advised that a female (W1) had called in to make a complaint of a breach of court order by AP. SO1 and SO2 proceeded to W1's residence to obtain a statement from her. SO2 noted that W1 had a swollen bottom lip and cheekbone. W1 stated that AP had been arrested a couple of days

before for kicking W1 in the face and W1 was concerned AP was out. W1 told police she called them because it was getting out of control. W1 showed the officers her phone and stated there was a bunch of missed calls from a private number. Shortly before she contacted RNC, she answered a call and had an approximate two-minute conversation with a male she identified as AP.

SO2 confirmed with police dispatch that AP was on a recognizance, which included a condition not to contact W1. Based on the information she gathered, SO2 formed grounds to arrest AP. SO1 and SO2 travelled to AP's residence and knocked on the door. After receiving no response, they left and advised dispatch they would check back later. Dispatch provided a number for AP's mother. SO2 called and spoke with AP's mother or father (she was unsure which) and was told AP should be home. SO2 asked the person to let police know if they heard from AP. A short time later, AP called police, advising he was home if police wanted to come and speak with him.

The two officers travelled to AP's residence. SO2 believed she knocked on the door but AP was right there. AP opened the door right away. It seemed he had been waiting at the door. SO2 described AP as being excited but not threatening. SO2 knew AP to have a hyperactive personality. AP was very talkative and did not understand why police were there. SO2 told AP that police were there because he was under arrest for contacting W1 and he was on a recognizance not to. AP had his phone in his hand and stated he would show the officers his call log. SO2 explained they had obtained a statement from W1. From what SO2 could recall the conversation moved inside the porch/hallway area of the residence.

SO2 described AP as all over the place. SO1 told him to calm down. The conversation continued and AP walked into the main part of the apartment. He said he had pizza in the oven. He stated he had not eaten in two or three days and wanted to eat his pizza. SO2 stated the conversation went from AP stating he did not do it [contact W1] to focusing on the fact he had pizza in the oven.

SO1 and SO2 were inside the doorway of the main apartment and AP had walked over to the oven, which was located on the back right side of the apartment wall. SO2 told AP he could take the pizza with him. SO2 said the conversation was not tense between them but AP was animated because he wanted his pizza. SO2 had no concern for herself and did not fear for her safety.

SO2 thought to herself that AP could not take the pizza in the back of the police car and was about to tell him to put the pizza in the microwave. They would let AP turn off his oven and gather some things, but he had to come with police. SO2 stated she must have looked away or down at her shoe, but when she looked up again AP was walking quickly towards her and SO1 with a knife in his right hand. She described AP as facing them and walking fast towards her and SO1 with the knife. She had no time and thought she was dead. AP had the knife up to his chest and he was moving it.

SO2 stated that AP was not angry but was walking towards them and did not say anything. He did not stop; he did not pause and was attacking her and SO1. She described the knife as approximately a foot long with a black handle. She and SO1 started screaming at AP to drop the knife. SO2 believed SO1 saw AP pick up the knife before she did because she was looking away at that split second. She looked over and saw SO1's two hands and his firearm. SO2 manage only to get the release off the top of her firearm but she did not get her gun out of the holster when she heard a pop. She looked down and saw AP face down on the floor. He still had the knife in his hand. She knelt on AP's butt and the back of his legs. SO1 was next to her and had his gun pointed at AP. SO1 was telling AP to drop the knife or he would shoot again. SO2 did not see AP drop the knife but she heard the blade hit the floor. She then called for an ambulance. She handcuffed AP's left hand and screamed at AP to give her his right hand. His right hand was above his head on the floor and he stated he could not move it.

The two officers moved AP to the futon. SO2 obtained a white towel and applied pressure to AP's shoulder. SO1 was to her left and she believed he was holding AP's legs down because AP was still animated, jumpy and talkative. AP was saying he could not breathe and looked like he was having a panic attack. She asked AP why he came at them and he replied he did not know and stated he needed water. SO1 retrieved a jug of water and AP splashed it on his face. AP kept saying he could not breathe and SO2 told him the ambulance was on its way. SO2 observed wounds to both sides of AP's arm.

AP was still trying to get up and move around but the officers were trying to keep him as still as they could until the ambulance arrived. Two other RNC officers arrived, relieved SO2 and told her to go back to the office. SO1 and SO2 left. SO2 stated she had to use the maps application on her cellular phone because she could not find her way out of the neighbourhood which she described as a neighbourhood she had been in a million times.

SO2 was not issued a body camera, and was not qualified to carry a Taser.

II. Civilian Witness Statements

Witness 2 (W2)

As noted above, the OPP obtained statements from numerous civilians. Of particular significance is a statement given by an individual (W2) who resided close to AP's residence and could hear the altercation between the subject officers and AP.

On November 27, 2018, at around 11:30pm, W2 was home alone playing a game on his computer when he heard a lot of noise from AP's apartment. It sounded like two people were fighting. He heard a loud bang. Just before the bang happened, he heard someone he believed to be a male scream "put down the knife, put down the knife now", "drop the knife". The male said "drop the knife" three times and then he kept saying it over and over. W2 then heard a loud bang and a big drop on the floor. He looked outside and saw a police car outside AP's residence. He went back inside and two more police cars and an ambulance arrived.

W2 stated he heard two bangs. He first heard a male say “drop the knife” twice and then he heard a bang. He then heard the male say “drop the knife” two more times and then he heard another big noise.

III. Autopsy

The Chief Medical Examiner concluded the cause of death was a gunshot wound. AP suffered a gunshot wound to the right forearm, an exit gunshot wound to the right forearm, and a re-entry gunshot wound to the upper right arm. All three wounds could be aligned with the right arm flexed at the shoulder and flexed at the elbow. The re-entry wound perforated the right upper lung. The bullet was located in the muscle tissue of the back.

IV. Forensics

Scene Processing

Search warrants were obtained for AP’s residence as well as the RNC evidence lockers at the Corner Brook Detachment.

Among the exhibits seized from the RNC lockers were the use of force equipment and uniforms assigned to the two subject officers.

On December 2, 2018, investigators processed the scene of the incident. The location was photographed, videotaped and measured. Evidence was seized which included a black handled knife. Several areas of bloodstaining were identified throughout the apartment and samples were collected.

Bloodstain Pattern Analysis

The Forensic Identification Support Services conducted a bloodstain analysis. The “Summary of Key Findings” section of the Report states, “The spatter stains on the door and ceiling, are consistent with being created by blood, with a DNA profile matched to AP, being affected by force while in close proximity to the door while in an open position”.

DNA Analysis

Multiple exhibits were obtained, including fingernail clippings and scrapings for the left and right hands of AP. The examination of the exhibits was conducted at the National Forensic Laboratory Services in Ottawa and Edmonton. The DNA profile obtained from one of these exhibits was of mixed origin. The profile of the additional contributor was that of an unknown male, designated as “Male 1”. The “Male 1” profile was entered into the DNA Data Bank of Canada.

What happened next was unusual. In May 2019, the OPP received an “Offender Hit Notification”, stating that the Male 1 Profile had matched with that of a known convicted offender. Upon further investigation, OPP learned that this known offender had died because of a homicide, several months before the subject incident took place.

OPP investigators brought this result to the attention of the RNC, at which time an RNC investigator was assigned to investigate the possible DNA contamination. That RNC investigation came to the conclusion that “in all likelihood the cross contamination was the result of the use of non-sterile bulk packaged cuticle sticks during at least two autopsies”.

It should be noted that, while cross-contamination is a very serious matter, it bears little relevance to the focus of this report, which again is the issue of whether the OPP investigated this matter objectively, comprehensively and took all investigational steps appropriate in the circumstances.

Use of Force

Upon review of the investigative file, SIRT-NL recommended that OPP investigators obtain a Use of Force report from an expert in the field, independent of the RNC. The OPP agreed with this recommendation and obtained a report. The Use of Force Expert concluded as follows:

In my opinion the use of lethal force by SO1 under these circumstances was reasonable to defend himself and SO2 against the perceived lethal force that was being presented to them, actions being taken and potential serious bodily harm and/or death to either or both officers.

Due to the suddenness of the events there was also little to no opportunity to employ other less than lethal options or to plan for same using a lethal offset as such actions would have required conscious thought and communication between SO1 and SO2 in an already time compressed and dynamic incident.

The environment left SO1 and SO2 little to no option to physically disengage as they were already in close proximity with AP who was continuing to advance closer leaving less time to react and less distance to utilize.

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SO1 fires one (1) round and reassesses the situation having seen AP fall back and away from him. AP now on the ground on his stomach and facing away from them.

In my opinion these actions by SO1 demonstrate he is assessing, planning and acting at reasonable points during this dynamically unfolding incident.

SO2 who hears the gunshot and looks again sees AP face down and does not continue to draw her firearm.

In my opinion these actions by SO2 demonstrate she is assessing, planning and acting accordingly as well as there is no longer an imminent threat and SO1 still has lethal coverage of AP who is still controlling the knife.

As SO1 and SO2 move in to secure AP commands are continuing to be given and assessments made as AP still holds the knife.

Once AP complies with the commands and the knife is released, both officers attempt to secure AP to ensure everyone's safety and being unable to do so again reassess that AP is no longer an immediate threat they provide first aid at scene and call immediately for medical assistance.

It is my opinion through my experiences as a police officer and Use of Force instructor that the actions of SO1 and SO2 were reasonable under the circumstances.

Their actions I believe as previously explained are in keeping with the Criminal Code of Canada, the Ontario Use of Force and what I believe their training to have been under the National Use of Force Framework.

OPP Investigators' Conclusion

After collecting and reviewing all evidence in relation to this investigation, the OPP investigators concluded SO1 was justified in using lethal force and therefore no reasonable and probable grounds exist for Criminal Code charges in relation to the death of AP.

Issues and Conclusion

The issue for SIRT-NL's consideration is whether the OPP investigators carried out the investigation properly and objectively and whether they pursued all investigative avenues appropriate in the circumstances.

Upon review of the investigative file, SIRT-NL has concluded the investigation was comprehensive, complete and in keeping with current recognized investigative standards. Investigators followed the principles of Major Case Management and utilized a Command Triangle (Major Case Manager, Primary Investigator/Victim Liaison and File Coordinator). In addition to this, the investigative team included a Search Warrant Coordinator/Field Investigator, a second Field Investigator, Forensic Identification and a Use of Force Consultant. The OPP Investigative Summary is comprehensive and contains a detailed outline of the investigation. The investigative file is organized, professional and in an easily searchable format.

The OPP team pursued all appropriate avenues of investigation and utilized numerous available methods to gather information. Investigators interviewed 10 RNC officers and 24 civilians, including but not limited to the two responding paramedics, the emergency room nurse, neighbours of AP and friends and family of both AP and SO1. A neighbourhood canvass was conducted, numerous search warrants were executed, the autopsy report was obtained, a

toxicology report was obtained, DNA and bloodstain analysis were conducted and the involved firearm was tested. In short, the investigation was comprehensive and thorough.

OPP investigators were cooperative with SIRT-NL throughout our oversight and were open to our recommendations. After reviewing the file, SIRT-NL recommended a Use of Force review be conducted by a subject matter expert outside the RNC. The OPP agreed with this and obtained a Use of Force Report as requested.

SIRT-NL also examined the investigation for evidence of investigational bias, tunnel vision, and/or a lack of objectivity. There was no evidence to suggest any of these issues were present. I have no concerns any bias existed in this investigation. Again, the OPP investigators were objective, thorough and welcomed SIRT-NL's input and recommendations.

The goal of this review is to determine whether the investigative agency – in this case, the OPP – conducted and completed the investigation in a manner consistent with accepted investigative standards and best practices. This is to maintain SIRT-NL's objective to ensure public confidence in policing in Newfoundland and Labrador. In this case, these investigative standards and practices were attained.

SIRT-NL recognizes the tragic nature of these cases and is available to provide assistance by explaining our role, process and findings to the subject officers and the family of the affected person.

This file is now concluded.

Final Report prepared by:

Michael King, Director
Serious Incident Response Team - Newfoundland and Labrador
August 19, 2021
File No. 2019-007